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5                   UNITED STATES DISTRICT COURT  
6                   WESTERN DISTRICT OF WASHINGTON  
7                   AT TACOMA

8                   RODNEY CARL WHEELER,  
9                   Petitioner,  
10                  v.  
11                  PAT GLEBE,  
12                  Respondent.

Case No. C10-5915BHS

ORDER DENYING  
PETITIONER'S MOTION TO  
WITHDRAW WITHOUT  
PREJUDICE AND ADOPTING  
REPORT AND  
RECOMMENDATION

14                  This matter comes before the Court on the Report and Recommendation ("R&R") of  
15 the Honorable Karen L. Strombom, United States Magistrate Judge (Dkt. 16) and  
16 Petitioner's Motion to Withdraw Without Prejudice (Dkt. 19).

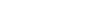
17                  In Petitioner's motion to withdraw, he argues that he has the right to voluntarily  
18 dismiss his case pursuant to Fed. R. Civ. P. 41. Dkt. 19 at 1-2. Petitioner requests that the  
19 Court dismiss his petition without prejudice so that he may exhaust his federal claims in  
20 state court. *Id.* at 2. Judge Strombom, however, found that Petitioner "is now procedurally  
21 barred from exhausting his federal claims in state court." Dkt. 16 at 9. The Court agrees  
22 with and adopts that finding. Therefore, although the Court may dismiss this petition  
23 without prejudice (Fed. R. Civ. P. 41 (a)(2)), the Court denies Petitioner's motion to  
24 voluntarily dismiss the petition without prejudice because Petitioner is barred from  
25 presenting his federal claims in state court.

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28 ORDER – 1

With regard to the R&R, the Court has considered the R&R and the remaining record, and no objections to the R&R having been filed, does hereby find and order as follows:

- (1) Petitioner's Motion to Withdraw Without Prejudice (Dkt. 19) is **DENIED**;
  - (2) The R&R is **ADOPTED**; and
  - (3) This action is **DISMISSED without prejudice**.

DATED this 17<sup>th</sup> day of May, 2011.

  
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BENJAMIN H. SETTLE  
United States District Judge